

### REMARKS

Claims 1, 6, 8, 15, 19 and 20 are amended. Claims 30 and 31 are canceled herein. Claims 10 and 22 were canceled in a previous response. Claims 32-35 are added. Accordingly, claims 1-9, 11-21, 23-29 and 32-35 are pending.

#### Claim Rejections - 35 USC § 102

Applicant respectfully requests reconsideration of the rejection to claims 1-8, 12-19, 21, 23-26, 30 and 31 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,957,082 (Fuson).

#### Claims 1 and 15

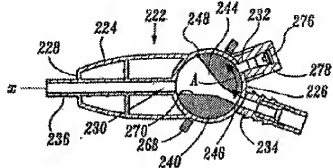
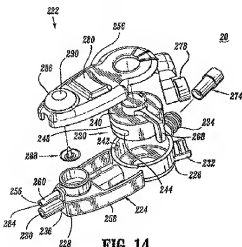
Claims 1 and 15 as amended recite, in relevant part, a valve comprising:

a housing including a first end, a second end and a first passageway that extends therealong and a second passageway that includes a relief port, the housing further including a first port and a second port; and

a valve member...;

wherein said second passageway is separate from the first passageway such that said valve member is not movable to any position establishing fluid communication between said first and second passageways.

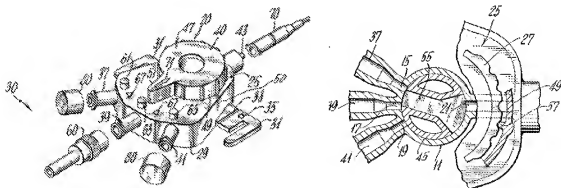
Referring to Figs. 14 and 15 (reproduced below) of Applicant's disclosure, the valve 22 includes a housing 224 that defines a first end 226 and a second end 228. The housing 224 includes a first passageway 230 extending through an attachment port 236. A second passageway 255 extends through relief port 260 disposed at the second end 228 of the housing 224.



**FIG. 15**

A valve member 240 is disposed within the housing 224 and is moveable relative to the housing. The valve member 240 defines a portion 244 of the first passageway 230 that includes a first opening 246 which is configured for fluid communication with the introduction port 232 when the valve member is in a first position and with the suction port 234 (as shown in Fig. 15) when the valve member is in a second position. The valve member 240 only communicates the first passageway 230 with the introduction and suction ports 232, 234. The valve member 240 does not communicate the first passageway 230 with the vent port 260 which makes up part of the second passageway 255. Thus, the first and second passageways 230, 255 are kept completely separate. That is to say, there is no configuration of the housing 224 in which the first passageway 230 communicates with the second passageway 255, or vice versa.

Fuson discloses a selection valve 20 comprising a rotor gate 40 disposed within a body and support member 50. Figures 1 and 8 are reproduced below. The support member includes a valve body 11 having a cylindrically shaped cavity 13. Three opening inlet ports 15, 17, 19 and an opening outlet port 21 extend through the wall of the body 11. Four connection tubes 37, 39, 41, 43 connect to the ports 15, 17, 19, 21, respectively. The rotor gate 40 includes a rotor member 45 having a rectangular passageway 55. Turning the rotor gate 40 selectively positions passageway 55 and outlet port 21 in communication with the three opening inlet ports 15, 17, 19 both individually and jointly for adjacent ports.



The Examiner asserts that outlet port 21 and connection tube 41 constitute Applicant's claimed first and second passageways, respectively. However, amended claims 1 and 15 state that the second passageway is separate from the first passageway such that the valve member is not movable to any position establishing fluid communication between said first and second passageways. In contrast, the connection tube 41 in Fuson is simply an extension of outlet port 21 when the rotor gate 40 is rotated to a position in which the passageway 55 places them in communication. Thus, the outlet port 21 and connection tube 41 are capable of being placed in fluid communication with each other. Therefore, the outlet port 21 and the connection tube 41 are not separate as required by the claims. Thus, Fuson fails to show every element recited in the claims. Accordingly, claims 1 and 15 are patentable over the cited reference. Claims 2-9, 11-14, 16-18, 21, 23-29 and 32-34 depend from either claims 1 or 15 and are patentable for at least the same reasons.

Furthermore, claim 6 as amended recites that the housing supports a depressible button that engages the valve member to release the first opening from alignment with the first port and the second port. Fuson does not disclose this element. The arrow 71 which the Examiner states as showing Applicant's claimed button is not a button. Further, the finger member 51 that the arrow 71 is embossed on is not depressible. Therefore, claim 6 is patentable over the cited reference for this additional reason.

Moreover, new claim 32 states that the first and second ports are located adjacent the first end of the housing and the relief port is located adjacent the second end of the housing. The Examiner points to connection tubes 37 and 39 as disclosing Applicant's claimed first and second ports, respectively, and asserts that inlet port 19 corresponds to Applicant's claimed relief port. However, claim 32 states that the first and second ports are disposed adjacent the first end of the housing and that the relief port is disposed adjacent the second end of the housing. In Fuson, the inlet port 19 and connection tubes 37, 39 are disposed at the same end. Therefore, they cannot correspond to Applicant's claimed first, second and relief ports. Accordingly, claim 32 is patentable over the cited reference for this additional reason.

Further, new claims 33 and 34 state that an anti-reflux valve is mounted in the housing and is in fluid communication with the relief port (claim 33), and that the housing further comprising an anti-reflux port defined by a membrane that is configured to permit passage of a cannula for communicating with the relief port (claim 34). The cited references, including Fuson, fail to disclose these features. Therefore, claims 33 and 34 are patentable over the prior art for these additional reasons.

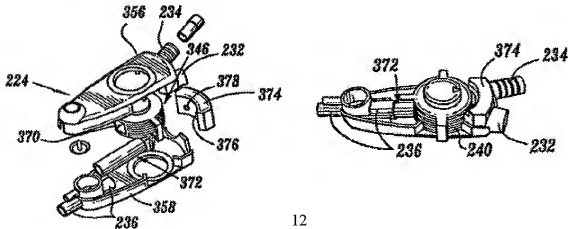
#### Claim 19

Claim 19, as amended, recites in relevant part, a valve comprising:

a housing including a first end, a second end and a first passageway that extends therealong and a second passageway that includes a relief port, the housing further including a first port and a second port, said first and second ports being disposed adjacent the first end of the housing, the housing further including a third port...;

said first passageway being defined in part by flexible tubing fluidly connecting said second opening and said third port, said tubing being configured to flex as the valve member moves to establish sealed fluid communication between the first opening and the first port or the second port while maintaining continuous sealed fluid communication between the second opening and the third port via the tubing.

Referring to Applicant's disclosure, Figs. 19 and 20 (reproduced below) show tubing 372 disposed within bore 370 for fluid communication with the first passageway 230 and connection to attachment port 236. The tubing 372 extends to an opening 246 and is configured to facilitate continuous fluid communication with the first passageway 230. The tubing 372 is also flexible allowing for rotation with valve member 240 to establish fluid communication with the introduction port 232 and second port 234.



The cited references, including Fuson, fail to disclose a first passageway being defined in part by flexible tubing. In fact, Fuson fails to disclose a valve having flexible tubing of any kind. The entire selection valve 20 is made of rigid plastic. The rotor gate 40 is made from a single piece of polyethylene and the support member 50 is made from a single piece of polypropylene. Therefore, the prior art fails to disclose every element recited in claim 19. Accordingly, claim 19 is patentable over the cited references. New claim 35 depends from claim 19 and is patentable for at least the same reasons.

New claim 35 further states that the second passageway is separate from the first passageway such that said valve member is not movable to any position establishing fluid communication between said first and second passageways. To the extent that claim 35 recites the language stated in claims 1 and 15 regarding the first and second passageways in the housing being separate, claim 35 is patentable for the same reasons discussed above for claims 1 and 15. Therefore, claim 35 is patentable over the cited references for this additional reason.

#### Claim Rejections - 35 USC § 103

Applicant respectfully requests reconsideration of the rejection of claim 9 under 35 U.S.C. 103(a) as being unpatentable over Fuson in view of U.S. Patent No. 5,261,459 (Atkinson).

Claim 9 depends from claim 1. As discussed above, Fuson fails to disclose every element recited in claim 1, specifically, a valve comprising a second passageway that is separate from the first passageway such that said valve member is not movable to any position establishing fluid communication between said first and second passageways. Atkinson, cited as disclosing a slit valve, also fails to show or suggest Applicant's claimed valve structure comprising separate first and second passageways. Accordingly, claim 9 is patentable over the cited references.

Applicant respectfully requests reconsideration of the rejection of claims 11, 20 and 27-29 under 35 U.S.C. 103(a) as being unpatentable over Fuson in view of U.S. Patent No. 5,088,486 (Jinotti).

Claims 11 and 27-29 depend from claim 1. As discussed above, Fuson fails to disclose every element recited in claim 1, specifically, a valve comprising a second passageway that is separate from the first passageway such that said valve member is not movable to any position establishing fluid communication between said first and second passageways. Jinotti is cited as showing a rotatable valve for connection to a dual lumen nasogastric tube, but it too fails to show or suggest Applicant's claimed valve structure comprising separate first and second passageways. Accordingly, claims 11 and 27-29 are patentable over the cited references.

Claim 20, as amended, recites in relevant part, a nasogastric valve system comprising:

- a nasogastric tube including a fluid lumen and a vent lumen, the fluid lumen defining a first portion of a first passageway, the vent lumen defining a first portion of a second passageway, wherein the first passageway and the second passageway fluidly communicate adjacent a distal end of the nasogastric tube;

- a housing defining a first end, a second end and a longitudinal axis, the housing including a second portion of the first passageway that extends therewithin and a second portion of the second passageway that includes a relief port...; and

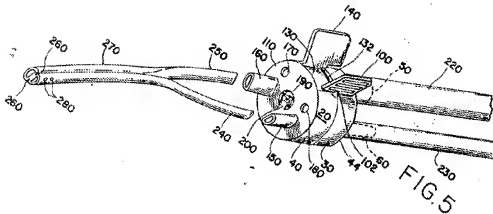
- a valve member...;

wherein said second portion of the second passageway is separate from the second portion of the first passageway such that said valve member is not movable to any position establishing fluid communication between said second portions of the first and second passageways.

Similar to claims 1 and 15, claim 20 states that the second passageway in the housing is separate from the first passageway in the housing such that said valve member is not movable to any position establishing fluid communication between said first and

second passageways in the housing. As discussed above, the outlet port 21 and the connection tube 41 in Fuson are not separate from each other in the valve body 11 such that they cannot be placed in fluid communication. Therefore, claim 20 is patentable over the cited references for at least the same reasons presented for claims 1 and 15.

Moreover, claim 20 states that the first passageway and the second passageway fluidly communicate adjacent a distal end of the nasogastric tube. Referring to Fig. 5 in Jinotti (reproduced below), lumens 240 and 250 remain separate throughout their entire length. The outer surfaces of the lumen 240, 250 are fused together toward the end of the lumen, but at no point do the passages within the lumen 240, 250 communicate with each other.



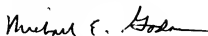
Therefore, the combination of Fuson and Jinotti fails to show or suggest the subject matter of claim 20 for this additional reason. Accordingly, claim 20 is patentable over the prior art for this additional reason.

**Conclusion**

In view of the foregoing, favorable consideration and acceptance of claims 1-9, 11-21, 23-29 and 32-35 is requested.

The Examiner is hereby authorized to charge any additional fees due or credit any over-payment of fees to Deposit Account No. 19-0254.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael E. Godar".

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